

STAT

Approved For Release 2003/12/02 : CIA-RDP58-00597A000100070017-8

DATE

14 March 1956

LEGISLATIVE BILL NO.

H. R. 7646 =

w/ H. Rept 1863

SECTION I

GENERAL

TO : 2-Dir/Personnel
 1 - OGC 1 - Military Personnel

FROM: LEGISLATIVE COUNSEL
 OFFICE OF GENERAL COUNSEL

THE ATTACHED BILL, WHICH HAS BEEN INTRODUCED INTO CONGRESS, IS:

 SENT TO YOU FOR INFORMATION ONLY. A BILL ON WHICH FAVORABLE CONGRESSIONAL ACTION IS IS NOT PREDICTED. SENT FOR YOUR COMMENT AS TO WHETHER IT IS OF INTEREST TO CIA ACTIVITIES, AND WHETHER FURTHER ACTION BY THIS OFFICE IS NECESSARY OR DESIRED.

IT IS REQUESTED THAT COMMENTS CONCERNING THIS LEGISLATION BE FORWARDED, THROUGH APPROPRIATE CHANNELS, TO THIS OFFICE, BY _____.

SECTION II

COMMENTS (From Original Addressee)

TO : LEGISLATIVE COUNSEL
 OFFICE OF GENERAL COUNSEL

FROM:

Office of General Counsel

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This bill authorizes the Secretaries of the military departments to pay counsel fees, court costs, bail, and other expenses incident to the representation before judicial tribunals and administrative agencies of any foreign nation of persons subject to the Uniform Code of Military Justice.

Currently it is not entirely clear whether civilian personnel and dependents are subject to the Uniform Code. There have been several cases on this question in the lower Federal courts, and the Smith-Kreuger Case is now up before the Supreme Court. Conversation with Mr. Monroe Leigh, Assistant General Counsel, Department of Defense, reveals his belief that the case will not be heard in the present term of court.

It is consequently possible that this legislation might pass, and that then the Supreme Court might hold that civilians and dependents are not subject to the Uniform Code.

It is, therefore, recommended that consideration be given to presenting an amendment to the legislation to include payment of these legal expenses of dependents and members of civilian components as well as uniformed personnel.

A suggested redraft is attached for your consideration.

STAT

DATE OF COMMENTS

16 March 1956

Union Calendar No. 657

84TH CONGRESS
2^D SESSION

H. R. 7646

[Report No. 1863]

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 1955

Mr. VINSON introduced the following bill; which was referred to the Committee on Armed Services

MARCH 8, 1956

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To authorize the Secretaries of the military departments, and the Secretary of the Treasury with respect to the Coast Guard, to incur expenses incident to the representation of their personnel before judicial tribunals and administrative agencies of any foreign nation.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the Secretary of the Army, the Secretary of the Navy,
- 4 the Secretary of the Air Force, and the Secretary of the
- 5 Treasury, with respect to the Coast Guard when it is oper-
- 6 ating as a service in the Department of the Treasury, may
- 7 employ counsel, and may pay counsel fees, court costs, bail,
- 8 and other expenses incident to the representation before

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1 judicial tribunals and administrative agencies of any foreign
2 nation of persons subject to the Uniform Code of Military
3 Justice.

4 SEC. 2. The Secretary of each of the military depart-
5 ments concerned, and the Department of the Treasury, shall
6 prescribe regulations which shall be uniform to the extent
7 practicable, to carry out the provisions of this Act.

8 SEC. 3. Sections 189 and 365 of the Revised Statutes
9 do not apply to any action taken under this Act.

10 *SEC. 4. No claim for reimbursement shall be made*
11 *against any person subject to the Uniform Code of Military*
12 *Justice with respect to any payments made on his behalf*
13 *under the authority of this Act: Provided, That claim for*
14 *reimbursement may be made against any such person who is*
15 *responsible for forfeiture of bail provided on his behalf at*
16 *Government expense.*

17 SEC. 4 5. Appropriations available to the military de-
18 partment concerned and to the Department of the Treasury
19 for the payment of personnel may be used to carry out the
20 terms and provisions of this Act.

Union Calendar No. 657

84TH CONGRESS
2D SESSION

H. R. 7646

[Report No. 1863]

A BILL

To authorize the Secretaries of the military departments, and the Secretary of the Treasury with respect to the Coast Guard, to incur expenses incident to the representation of their personnel before judicial tribunals and administration agencies of any foreign nation.

By Mr. VINSON

JULY 27, 1955

Referred to the Committee on Armed Services

MARCH 8, 1956

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

84TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } No. 1863

AUTHORIZING THE SECRETARIES OF THE MILITARY DEPARTMENTS AND THE SECRETARY OF THE TREASURY TO INCUR EXPENSES INCIDENT TO THE REPRESENTATION OF THEIR PERSONNEL BEFORE FOREIGN JUDICIAL TRIBUNALS

MARCH 8, 1956.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Brooks of Louisiana, from the Committee on Armed Services, submitted the following

R E P O R T

[To accompany H. R. 7646]

The Committee on Armed Services, to whom was referred the bill (H. R. 7646) to authorize the Secretaries of the military departments, and the Secretary of the Treasury with respect to the Coast Guard, to incur expenses incident to the representation of their personnel before judicial tribunals and administrative agencies of any foreign nation, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Renumber section 4 as section 5, and add a new section 4 as follows:

SEC. 4. No claim for reimbursement shall be made against any person subject to the Uniform Code of Military Justice with respect to any payments made on his behalf under the authority of this Act: *Provided*, That claim for reimbursement may be made against any such person who is responsible for forfeiture of bail provided on his behalf at Government expense.

PURPOSE OF THE LEGISLATION

The bill would authorize the Secretaries of the Army, Navy, and Air Force, and the Secretary of the Treasury with respect to the Coast Guard when it is operating as a service in the Department of the Treasury, to employ counsel and pay counsel fees, court costs, bail, and other expenses incident to the representation before judicial tribunals and administrative agencies of any foreign nation, for persons subject to the Uniform Code of Military Justice. This would include substantially all persons serving with, employed by, or accompanying the Armed Forces of the United States abroad. This bill is

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a means of supplementing the substantial list of protections already secured by the NATO Status of Forces Agreement and related agreements.

EXPLANATION OF THE BILL

Many members of the Armed Forces of the United States, civilian employees and their dependents are present in foreign countries as a result of orders of the United States Government. Such personnel in foreign countries are amenable to the jurisdiction of foreign courts and administrative agencies under the Agreement Regarding Status of Forces of Parties to the North Atlantic Treaty, and similar agreements. Since the United States Government is responsible for the health and well-being of such personnel, it should be equally responsible for safeguarding their interests in cases involving legal proceedings in foreign courts. In addition, the interests and prestige of the United States Government may be directly involved in many of such cases which are brought before foreign tribunals.

The Uniform Code of Military Justice requires that personnel subject thereto be provided with Government counsel before courts-martial if they cannot or do not wish to provide their own. There is at least equal justification to provide counsel and pay expenses for such personnel before foreign courts. The concept that the Government does not furnish counsel to military personnel before State and local courts of the United States is not inconsistent with this proposed legislation. In the United States, the American Bar Association and other local bar groups have, since the start of World War II, furnished extensive legal assistance at no cost or for nominal fees to service personnel throughout the United States. In addition, there has been a close working relationship with law enforcement officials and post commanders for the purpose of effective enforcement of local laws without resorting to drawn-out and often costly legal procedures. Similar cooperation is not always readily possible in foreign countries.

In order to protect United States personnel against possible disadvantages which may arise as a result of unfamiliarity with local laws, procedures, and language, it is important that the military departments be authorized to employ local counsel and to pay fees, court costs, bail, and other expenses incident to the representation of such personnel before foreign judicial and administrative agencies.

The NATO Status of Forces Agreement contains a list of rights which are guaranteed to every serviceman in the event he is to be prosecuted in the courts of a foreign country. This list includes—

- (1) the right to a prompt and speedy trial,
- (2) the right to be informed in advance of trial of the specific charge or charges against him,
- (3) the right to be confronted with witnesses against him,
- (4) the right to have compulsory process for obtaining witnesses in his favor,
- (5) the right to have legal representation of his own choice for his defense or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving state,
- (6) the right to have the services of a competent interpreter,
- (7) the right to communicate with a representative of his Government,

(8) the right to have such a representative present at his trial, when the rules of the court so permit.

There is also a prohibition against double jeopardy.

This country has an administrative agreement with the Government of Japan which is patterned after the Status of Forces Agreement and contains the same list of guaranties. These two agreements cover the overwhelming majority of our overseas personnel who may be subject to the jurisdiction of foreign courts. In certain other countries we have agreements similar to those in force in NATO countries and in Japan.

It is the policy of the Department of Defense to send an observer to every trial by a foreign court of our personnel and in all but minor traffic cases it is required that this observer be a person with legal training. His function is to report any violation of the guaranties contained in the relevant international agreements or any instance of unfairness in the trial.

The bill will complement the agreements which govern the status of our forces overseas. These agreements seek to guarantee that persons subject to the Uniform Code of Military Justice who are tried by foreign tribunals will receive absolutely fair treatment. We send observers to criminal courts to see that justice is done. The additional guaranty that service personnel will have competent and experienced local counsel at Government expense should provide yet another assurance that our personnel who are overseas on military orders will receive fair treatment in foreign courts.

It is also believed that this legislation will have great morale value. In addition, by helping eliminate any basis for accusations of unfair treatment by foreign courts, it should help sustain and increase friendly relations with those allied countries in which our troops are stationed.

Following is an analysis concerning offenses over which criminal jurisdiction was exercised by foreign tribunals of United States citizens subject to military law for the period December 1, 1954, to November 30, 1955.

Exercise of criminal jurisdiction by foreign tribunals over United States citizens subject to military law—Analysis

Area: World.

Service: All.

Period: Dec. 1, 1954–Nov. 30, 1955.

Number of offenses subject to foreign jurisdiction	10,249
Offenses subject to foreign jurisdiction as to which a waiver of local jurisdiction was obtained:	

Number	6,769
Percent	66.04

Number of offenses subject to foreign jurisdiction as to which charges were "dropped"	274
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Percent of all offenses subject to foreign jurisdiction	2.67
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Number of offenses tried by local tribunals	3,142
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Percent of all offenses subject to foreign jurisdiction	30.65
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Number of serious offenses tried by local tribunals ¹	353
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Percent of offenses tried by foreign tribunals	11.23
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Number of offenses tried by local tribunals as to which there was an acquittal	225
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Percent of offenses tried by foreign tribunals	7.16
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¹ Murder, rape, manslaughter, arson, robbery, larceny and related offenses, burglary and related offenses, forgery and related offenses and aggravated assault.

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Exercise of criminal jurisdiction by foreign tribunals over United States citizens subject to military law—Analysis—Continued

Offenses tried by local tribunals as to which a sentence to confinement was imposed:

Number-----	266
Percent of offenses tried by local tribunals-----	8.46
Percent of all offenses subject to foreign jurisdiction-----	2.59

Sentences to confinement not suspended:

Number-----	120
Percent of offenses tried by local tribunals-----	3.81
Percent of all offenses subject to foreign jurisdiction-----	1.17

Offenses tried by local tribunals as to which a fine only was imposed:

Number-----	2,595
Percent of offenses tried by local tribunals-----	82.59
Percent of all offenses subject to foreign jurisdiction-----	25.31

COMMITTEE AMENDMENT

The committee added a new section to the bill which provides that no claim for reimbursement shall be made against any person subject to the Uniform Code of Military Justice with respect to any payments made on his behalf under the authority of the bill. However, a claim for reimbursement could be made against any such person who is responsible for forfeiture of bail provided on his behalf at Government expense. The committee adopted the amendment because it was believed that service personnel would not be required, at some later date, to pay back any financial assistance which the bill would authorize, with the exception of forfeiture of bail. A person tried under the provisions of the Uniform Code of Military Justice is guaranteed Government counsel if he cannot or does not wish to provide his own. Such counsel is provided at no expense to the defendant. Furthermore, when counsel is employed by this Government in a foreign country the serviceman would have no choice in the setting of the fee for the counsel's service. Consequently, the committee believes that no claim for reimbursement, aside from bail forfeiture, should be made.

COST AND BUDGET DATA

It is difficult to state with assurance what the total cost to the Government will be for the proposed legislation. However, an estimate can be made based on the criteria showing the number of United States military personnel who, during the past year, were accused of offenses which subjected them to foreign jurisdiction, and which show the number of waivers, trials, acquittals, fines, imprisonments, and suspensions which occurred. Unless the situation alters radically the annual cost of this bill is not expected to exceed \$250,000. It should be noted that the bill provides that appropriations available for payment of personnel may be used to implement its purposes. There is no intention on behalf of the Department of Defense to ask for separate appropriations.

DEPARTMENT RECOMMENDATIONS

The Department of Defense recommends the enactment of the bill as is indicated by the following letter:

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TO INCUR EXPENSES BEFORE FOREIGN JUDICIAL TRIBUNALS 5

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
LEGISLATIVE AND PUBLIC AFFAIRS,
Washington, D. C., July 26, 1955.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is forwarded herewith a draft of legislation to authorize the Secretaries of the military departments, and the Secretary of the Treasury with respect to the Coast Guard, to incur expenses incident to the representation of their personnel before judicial tribunals and administrative agencies of any foreign nation.

This proposal is a part of the Department of Defense legislative program for 1955 and the Bureau of the Budget has advised that there would be no objection to the presentation of this proposal for the consideration of the Congress. It is recommended that this proposal be enacted.

PURPOSE OF THE LEGISLATION

The proposed legislation would authorize the Secretaries of the Army, Navy, and Air Force, and the Secretary of the Treasury with respect to the Coast Guard when it is operating as a service in the Department of the Treasury, to employ counsel and pay counsel fees, court costs, bail, and other expenses incident to the representation before judicial tribunals and administrative agencies of any foreign nation, for persons subject to the Uniform Code of Military Justice. This would include substantially all persons serving with, employed by, or accompanying the Armed Forces of the United States abroad.

Many members of the Armed Forces of the United States, civilian employees and their dependents are present in foreign countries as a result of orders of the United States Government. Such personnel in foreign countries are amenable to the jurisdiction of foreign courts and administrative agencies under the Agreement Regarding Status of Forces of Parties to the North Atlantic Treaty, and similar agreements. Since the United States Government is responsible for the health and well-being of such personnel, it should be equally responsible for safeguarding their interests in cases involving legal proceedings in foreign courts. In addition, the interests and prestige of the United States Government may be directly involved in many of such cases which are brought before foreign tribunals.

The Uniform Code of Military Justice requires that personnel subject thereto be provided with Government counsel before courts-martial if they cannot or do not wish to provide their own. There is at least equal justification to provide counsel and pay expenses for such personnel before foreign courts. The concept that the Government does not furnish counsel to military personnel before State and local courts of the United States is not inconsistent with this proposed legislation. In the United States, the American Bar Association and other local bar groups have, since the start of World War II, furnished extensive legal assistance at no cost or for nominal fees to service personnel throughout the United States. In addition, there has been a close working relationship with law-enforcement officials and post commanders for the purpose of effective enforcement of local laws without resorting to drawn-out and often costly legal procedures. Similar cooperation is not always readily possible in foreign countries.

In order to protect United States personnel against possible disadvantages which may arise as a result of unfamiliarity with local laws, procedures, and language, and in addition, in order to guard against what may be in effect a case or suit directed against the United States itself, or detrimental to the interest of this Government, it is important that the military departments be authorized to employ local counsel and to pay fees, court costs, bail, and other expenses incident to the representation of such personnel before foreign judicial and administrative agencies.

It is contemplated that in the majority of the cases, the legal expenses incurred by the Government will be incident to representation in criminal cases, although in some cases it will be appropriate to provide counsel in civil matters where it appears that the suit is, in fact, directed at the United States itself, or where it would be in the interests of the Government to undertake the representation of the individual. The regulations to be issued under this proposal will establish necessary criteria for the availability of counsel and the payment of expenses. Departmental witnesses will be prepared to discuss the proposed regulations at the request of appropriate congressional committees.

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It is believed that the proposed legislation would greatly assist in protecting the interests and prestige of the United States abroad. It will aid the Armed Forces of the United States in performing their mission in foreign countries, contribute to their morale, and enhance friendly relations with the foreign countries in which United States forces are stationed.

COST AND BUDGET DATA

Although it is impossible to estimate accurately the increased costs that will result from the enactment of the proposal, it is anticipated that it will be sufficiently small so that it may be absorbed.

Sincerely yours,

LORNE KENNEDY,
Deputy for Legislative Affairs.

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